

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*  
\*SILAS CALHOUN and EMILY CALHOUN, \*  
Individually and as Parents and \*  
Next Friends of ESTELLA CALHOUN \*  
Plaintiffs \* CIVIL ACTION  
vs. \* No. 04-10480-RGS  
\*  
\*UNITED STATES OF AMERICA \*  
Defendant \*  
\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

BEFORE THE HONORABLE RICHARD G. STEARNS  
UNITED STATES DISTRICT JUDGE  
BENCH TRIAL DAY FOUR  
April 12, 2007

APPEARANCES:

SUGARMAN, ROGERS, BARSHAK & COHEN, P.C., (By  
Michael S. Appel, Esq.) 101 Merrimac Street, Boston,  
Massachusetts 02114-4737, on behalf of Plaintiffs

UNITED STATES ATTORNEY'S OFFICE, (By AUSA Anton P.  
Giedt and AUSA Karen Goodwin) J. Joseph Moakley  
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1 And then moves on to his physical exam and evaluation of the  
2 baby.

3 Should I just keep going?

4 Q Yes. Go ahead.

5 A Okay.

6 So he notes that she's awake and alert, that her  
7 vital signs are stable and she's afebrile. So the baby  
8 looks good.

9 He identifies the fact that she is jaundiced all  
10 over her body, so all the way down to her feet, and -- but  
11 that her -- the rest of her exam is pretty normal for a baby  
12 of this age. Other than the jaundice, she has no skin rash.  
13 He does note that the skin is loose, indicating that there  
14 could be some mild degree of dehydration, that's common in  
15 breast-fed babies, and notes the weight as it was recorded  
16 at the clinic.

17 Q On this loose skin, you said that's common for  
18 breast-fed babies, have you in your training and experience  
19 seen that before or at this interval?

20 A Sure. And, again, I mean, some degree of mild  
21 dehydration is not at all uncommon in breast-fed babies,  
22 because they typically get relatively less fluid in the  
23 first few days of life when the milk is coming in, and they  
24 and their mother are sort of working out the interaction  
25 around breast-feeding. So some mild degree of dehydration

1 what your interpretation of these records say about the  
2 weight in this case?

3 A Oh, sure.

4 Well, weight is definitely one factor, but it is  
5 one factor, and that a pediatrician or a family practitioner  
6 would be remiss if they relied only on weight or if, you  
7 know, that was a single factor, that the job of the  
8 practitioner is to take the entire picture into  
9 consideration.

10 The weight on the 29th doesn't make any sense to  
11 me, in that it's the same as the birth weight, which would  
12 be very unusual to see that weight at day four; whereas, the  
13 weight on the 1st is one that's sort of perfectly consistent  
14 with the general course that this baby seems to be -- that  
15 this baby is following, according to the records.

16 So it does not -- I can't see any indication that  
17 weight on the 29th became -- or was any sort of  
18 significant factor in determining or pushing a decision  
19 about what to do or what not to do. And, you know, I think  
20 that's because it's a piece of information that doesn't make  
21 any sense in concert with all the other information that  
22 Dr. Daub had about the baby on that day.

23 Q In saying that the weight on the 29th doesn't make any  
24 sense, you're not at this point rendering any opinion about  
25 how the weight was taken. You're just says it doesn't make

1 Q And I think you had just agreed that the weight of 8  
2 pounds 13 ounces is highly improbable?

3 A I don't think I just agreed with that. I think I said  
4 that before.

5 Q You did. You said that on your direct testimony.

6 A Yes, I did.

7 Q That that was highly improbable, based on the fact that  
8 the discharge weight was 8 pounds 8 ounces and babies  
9 continue to tend to lose more weight over the course of the  
10 first few days of life, correct?

11 A That's correct.

12 Q Do you see any indication here in the record that  
13 Dr. Daub did anything to verify the accuracy of the 8 pounds  
14 13 ounces?

15 A No.

16 Q Now, you've read Mr. and Mrs. Calhoun's depositions?

17 A Yes, I have.

18 Q And I don't know if you're aware they've already  
19 testified here in court. Are you aware of that, that  
20 they've testified?

21 A No.

22 Q In any event, you've seen in their depositions and you  
23 know that they've testified that Estella was weighed fully  
24 clothed on that day, correct?

25 A Yes. I recall that from their depositions.

1 A They look pretty familiar to me.

2 Q You use them at Brigham & Women's?

3 A Yes.

4 Q So their recollection was that she was wearing -- she  
5 had two of these and was put right on the scale.

6 And do you recall at least part of that from the  
7 depositions?

8 A Well, I don't -- I just don't recall that much detail,  
9 but that I do recall that they testified that she was fully  
10 clothed.

11 Q And you've never met them before, correct?

12 A No.

13 Q Today is the first time you ever laid eyes on  
14 Mrs. Calhoun?

15 A Yes.

16 Q You have no reason to doubt their credibility in this  
17 case?

18 MR. GIEDT: Objection, your Honor.

19 THE COURT: Sustained.

20 Q Now, you would agree with me that if the baby was  
21 weighed in that fashion, that that would have been a  
22 deviation from the standard of care, highly inappropriate?

23 A Yeah. It wouldn't have been a particularly useful thing  
24 to do, no.

25 Q As a matter of fact, from your reading of the

1 and I look at the global picture of the baby, which is the  
2 practitioner's responsibility, then I see an 11-ounce weight  
3 loss from birth.

4 Q Right now I am just asking you to look at it from the  
5 practitioner's point of view over 24 hours, because that's  
6 all he has seen. He has seen the child on -- this is the  
7 second visit. Yesterday, on the 29th, we have a weight of 8  
8 pounds 13 ounces, correct?

9 A Yes.

10 Q Today the child comes in it's, wow, it's 8 pounds 2  
11 ounces. The weight is down some?

12 A Sure.

13 Q Actually, that's a very dramatic weight loss overnight?

14 A If that's truly the weight loss, that would be a  
15 dramatic weight loss overnight.

16 Q And actually you know from Mr. and Mrs. Calhoun's  
17 depositions, that they have testified that the baby was  
18 weighed clothed again on that day?

19 A That's right. I know that from their depositions.

20 Q And assuming that that is true, then the 8 pounds 2  
21 ounces is also incorrect, and she was probably weighing less  
22 than that?

23 A If I assume that she was weighed clothed, then I would  
24 say she weighs something less than that.

25 Q And again we don't know how much less she was weighing,